

23-5066

No. \_\_\_\_\_

FILED

JUN 26 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JUAN REYES

— PETITIONER

(Your Name)

vs.

STATE OF ILLINOIS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Illinois Appellate Court, Fourth District

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JUAN REYES R-08935

(Your Name)

700 W. Lincoln St. P.O. Box 99

(Address)

PONTIAC, IL. 61764

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

1) Whether Illinois has failed after (60) years to correctly apply Brady v. Maryland whereas petitioners Right to Due Process was suspended as presented.

2) Whether Illinois has failed after (61) years to correctly apply Napue v. Illinois whereas petitioners Right to Due Process was suspended as presented.

3) Whether Illinois has failed after (39) years to correctly apply Strickland v. Washington whereas petitioners Right to the effective assistance of trial counsel was suspended as presented.

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A PEOPLE V. REYES 2022 IL APP(4th) 210541-L1

APPENDIX B December 15 2022 App Lt letter denying Rehearing  
No longer have

APPENDIX C Decision of state trial Court denying leave to file  
Successive Postconviction Petition dated 3/18/21

APPENDIX D Decision of Illinois Supreme Court denying PLA  
dated 3/29/23

APPENDIX E

APPENDIX F

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Brady V. Maryland. 373 U.S. 83, 10 L.Ed 2d 215, 83 S.Ct (1963)

Napue V. Illinois 360 U.S. 264, 79 S.Ct 1173 3 L.Ed 2d 1217 (1959)

Strickland V. Washington 466 U.S. 668, 80 L.Ed 2d 674, 104 S.Ct 2052 (1984)

### STATUTES AND RULES

### OTHER

Reyes V. Nurse U.S. Ct of Appeals 7th Cir Case No. 20-1432 (2022)

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts:** N/A

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished. 2022 IL App (4th) 210541-U

The opinion of the Illinois Supreme Court court appears at Appendix B to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

## JURISDICTION

☐ For cases from **federal courts:** N/A

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts:**

The date on which the highest state court decided my case was 11/16/22.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: 12/15/2022, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1.) The 14<sup>th</sup> Amendment of the U.S. Constitution, section 1, states:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2.) The 6<sup>th</sup> Amendment of the U.S. Constitution states: "In

all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."



## STATEMENT OF THE CASE

Following a jury trial, Juan Reyes was convicted of aggravated battery with a firearm, attempt first degree murder, first degree murder, and home invasion. (C. 213-21) He was sentenced to serve thirty years in prison for attempt first degree murder, life for first degree murder, and life for home invasion. (C. 262) Reyes appealed. (C. 270) On direct appeal, Juan Reyes raised two issues: (1) his right to a speedy trial was violated; and (2) the photographic arrays shown to the complaining witness were suggestive enough to violate due process. (C. 309-10) This Court affirmed. (C. 308-39); *People v. Reyes*, No. 4-07-0412 (October 7, 2008).

### Original Post-Conviction Petition

On October 5, 2009, Reyes filed his first post-conviction petition. (C. 359) The 444-page petition included allegations that: (1) the prosecution committed constitutional violations in presenting the case to the grand jury; (2) trial counsel was ineffective for failing to adequately cross-examine a prosecution witness; (3) trial counsel was ineffective for inadequately preparing for a suppression hearing and the court erred in refusing to suppress evidence; (4) the prosecution engaged in a "pattern of misconduct" that violated due process and equal protection; (5) appellate counsel was ineffective for misstating facts; (6) appellate counsel was ineffective for failing to raise the issue of reasonable doubt; and (7) the prosecution effectively denied Reyes due process by withholding discovery materials to prevent him from obtaining a speedy trial and to adequately prepare a defense. (C. 359-02, 838 )(trial court summarizing claims)

A *pro se* motion to supplement and amend the post-conviction petition was filed on October 27, 2009. (C. 803) It alleged that a juror was biased against him and trial counsel was ineffective for failing to exercise a peremptory challenge against that juror. (C. 803-11) On December 29, 2009, the trial court summarily dismissed the petition. (C. 836-42) A motion to reconsider was filed and denied. (C. 848-51, 854)

Reyes appealed and this Court affirmed on June 17, 2014. (C. 857); *People v. Reyes*, 2014 IL App (4th) 100183-UB, ¶¶ 1-4. On appeal two issues were raised: whether the dismissal was erroneous where there was an arguable violation of due process where the State presented deceptive and inaccurate testimony to the grand jury and whether trial counsel was ineffective for not impeaching a State witness with his grand jury testimony. (C. 2536) A petition for leave to appeal to the Illinois Supreme Court was denied on March 26, 2014. (C. 3208)

#### **Successive Post-Judgment Motions**

On November 19, 2009, Reyes filed a *pro se* motion for relief from judgment pursuant to 735 ILCS 5/2-1401. (C. 816-18) Reyes alleged that his sentence of three consecutive terms of life in prison, plus an additional 30 years, was void under *People v. Palmer*, 218 Ill. 2d 148, 164-69 (2006). (C. 816-18) On July 16, 2010, the trial court denied the section 2-1401 motion. (C. 878-80; 881-82)

On May 2, 2012, Reyes filed a *pro se* petition for relief from judgment pursuant to 735 ILCS 5/2-1401. (C. 886-21) On July 5, 2012, Reyes moved to voluntarily dismiss that petition. (C. 9)

On May 23, 2012, Reyes filed a motion for leave to file a successive post-conviction petition and a successive post-conviction petition. (C. 922-94) Subsequently, Reyes moved to withdraw that motion and petition. (C. 995-97, 1000-04)

On August 24, 2012, Reyes filed another *pro se* motion for leave to file a successive post-conviction petition and successive post-conviction petition. (C. 1005-2030) Then on September 21, 2012, Reyes moved to withdraw the motion to file a successive post-conviction petition and the motion to amend that motion. (C. 2061-63)

#### **January 2013 Motion for Leave**

On January 17, 2013, Reyes filed a *pro se* motion for leave to file a successive post-conviction petition and a successive post-conviction petition alleging actual innocence. (C. 2066-2394) Reyes alleged the State introduced perjured testimony violating his due process,

the State used false information to obtain a continuance tolling his speedy trial rights, the trial judge was biased denying him a fair trial, defense counsel was ineffective, the State withheld discovery denying him the ability to adequately prepare a defense, investigators engaged in misconduct, the State provided false information to the court at sentencing, and the charging instrument was void. (C. 2066-22) Reyes asserted cause and prejudice. (C. 2123-28)

The trial court denied the motion for leave to file a successive post-conviction petition on March 25, 2013. (C. 2400-04) Reyes appealed and this Court affirmed. (C. 2446, 3195, 3992)

#### **June 2013 2-1401 Petition**

On June 2013, Reyes filed a *pro se* petition for relief from judgement pursuant to 735 ILCS 5/2-1401. (C. 2419-25) The petition alleged that the court's "denial of relief on Petitioner's indictment issue should be reversed as it resulted from an erroneous application of Illinois law." (C. 2421) On October 22, 2013, the trial court denied the petition. (C. 2431-2433) Reyes appealed and this Court dismissed the appeal. (C. 3263)

#### **June 2015 Motion for Leave**

On June 5, 2015, Reyes filed a *pro se* motion for leave to file a successive post-conviction petition and a successive post-conviction petition. (C. 2450-3120) It alleged that appellate counsel on the appeal of his first post-conviction petition provided unreasonable assistance of counsel in that he: (1) failed to file a motion for rehearing; (2) failed to file "all petitioners post conviction issues in petitioners brief;" (3) failed to raise two "meritorious constitutional claims that were originally raised in the appellate courts brief in the newly PLA filed;" (4) misstated facts and added false information to the statement of facts; and (5) failed to include a Rule 651(c) certificate. (C. 2451-52) Reyes requested to: "reinstate the (8) issues that were raised in petitioners original post conviction petition whereas the Vermilion County courthouse reviewed the (8) issues and denied the petition, and of the (8) eight issues [appellate counsel] raised only (2) two of the (8) eight issues to the appellate court, and [appellate counsel] did not raise any of the (8) eight issues to the Illinois Supreme Court." (C. 2452)

On October 26, 2015, a *pro se* amendment to the petition was filed. (C. 3134-3190)

Reyes requested to add the issue that “trial counsel provided ineffective assistance of counsel by withholding evidence that was favorable to the defense which caused a cumulative effect.”

(C. 3136) He further alleged he could not raise issues 1, 2, and 3 earlier because he did not have the necessary documentation. (C. 3137-40) He alleged he was prejudiced by his trial

attorney’s failure to give him an affidavit showing that the State had lied to procure the tolling of the speedy trial clock. (C. 3141-42) Reyes stated that “trial counsel failed to produce a sworn

notarized affidavit from [the prosecutor] to further help the 120 day speedy trial violation motion argued at the January 8, 2007 hearing.” (C. 3143) He alleged prejudice to issues 2 and 3 in

that counsel failed to produce “the police reports or compelling to wit[ne]sses to attend trial to testify, whose testimonies was favorable to the accused.” (C. 3147) Reyes stated trial counsel

“failed to produce a police report and the witness that gave the report to the trial jury about the witnesses friend admitting to the witness that he had William Thomas murder[e]d”; and

“failed to produce a police report and the witness that gave the report to the trial jury about the witnesses son, William Thomas’ fiancée [] moving her new boyfriend [] into William Thomas’

home within two weeks of William Thomas being murder[e]d.” (C. 3150-53)

On April 26, 2016, Reyes filed another *pro se* amendment. (C. 3199-3229) Reyes stated:

“Petitioner is amending said successive post conviction petition in order to clarify the argument in . . . of the successive post conviction petition and add the exhibits so the courts can get a better understanding of petitioner’s argument.” (C. 3200)

On June 2, 2016, the trial court denied the motion. (C. 3243-48) Reyes appealed the denial. (C. 3250) Pursuant to Reyes’s motion to dismiss, the appeal was dismissed.

(C. 3264, 3992)

### Present Appeal Motion for Leave

On September 7, 2018, Reyes filed a *pro se* "Motion for Leave to File a Successive Post-Conviction" petition. (C. 3290-13,) Reyes alleged that he "has obtained new evidence" and filed several exhibits. (C. 3291, 3314-49, 3438-10)

#### *Issue One*

In the section titled "Issue One Police Misconduct," Reyes alleged that Alex Garcia, a co-defendant and witness against him, acted as a confidential source for agents Webb and 9935. (C. 3291) Reyes provided that Garcia would supply "fake drugs." (C. 3291)

As cause for not bringing the claim in "Issue One" earlier, Reyes stated, in part: "Petitioner could not have brought issue one in his original post conviction cause petitioner obtained most of the documents from the Illinois State Police on March 9, 2017 Reyes also stated that he was placed in segregation and not allowed to have access to inmate law clerks or the law library in September 2017 and various other times. (C. 3291) Reyes stated that he was not allowed to access his legal documents at various times in 2017 and 2018. (C. 3293) In the section titled "Prejudice," Reyes stated:

"Petitioner was denied his 5th, 6th, and 14th U.S. constitutional rights and his 2, 6, 7, and 8th Amendment of the Illinois State Constitution, whereas V-Meg agents Webb and Thompson concealing the fact that co-defendant Alex Garcia was a confidential source providing V-Meg agents with false information and fake drugs denied the petitioner the right to confront a witness, prepare a defense with the evidence needed to impeach Alex Garcia before the trial jury, whereas Alex Garcia was the first person to implicate petitioner as a suspect." (C. 3293-94)

*Issue Two*

In the section titled "Issue Two Ineffective Assistance of Counsel," Reyes stated: "Trial defense counsel has not represented the petitioner to the satisfaction of the 6th Amendment when counsel failed to pursue an impeaching cross examination or present additional evidence that would in all reasonable probability cast a reasonable doubt on the testimony of Alex Garcia." (C. 3294) Reyes stated that when counsel cross-examined Garcia during the trial, "counsel asked Garcia if he ever provided fake drugs to V-Meg agents pertaining to the last report 8-6-04 but counsel refused to proceed on the topic by failing to ask" the number of times he did so or if he had a pending case against him. (C. 3294) Reyes alleged that counsel failed to properly investigate where counsel was not aware that Garcia had provided fake drugs on four occasions. (C. 3294-95)

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Cause for "Issue Two" was stated as: "As explained in previous cause, petitioner could not have raised Issue 2 in his original Post Conviction petition whereas petitioner obtained the information from the Illinois State police on March 9, 2017, as explained further in previous cause, petitioner, after obtaining the reports from the Illinois State police, petitioner has been in segregation unable to attend the law library to do the proper research needed or obtain his legal boxes where said legal documents were stored." (C. 3295)

Reyes alleged he was prejudiced: "Trial counsel has not represented the petitioner at trial to the satisfaction of the Sixth Amendment whereas counsel["]s failure to properly investigate the reports needed to properly impeach Alex Garcia about deceiving V-Meg agents with false information and fake drugs." (C. 3296) Reyes further provided that counsel failed to cross-examine Garcia on "providing fake drugs and not having any charge["]s filed against him and had no case pending against him for providing the fake drugs." (C. 3296) Reyes alleged that such cross-examination would have "in all reasonable probability cast a reasonable doubt on the testimony of Alex Garcia." (C. 3296)

### *Issue Three*

In the section titled "Issue Three Ineffective Assistance of Counsel," Reyes alleged that counsel failed to move the court to disqualify the Vermilion County Prosecutor's Office because the office "was under investigation by the F.B.I. for public corruption, which led to a 138 pg federal grand jury transcript indictment on Larry S. Mills." (C. 3296) Reyes stated: "Larry S. Mills not charging a witness with a crime explains why Alex Garcia was never charged with providing fake drugs." (C. 3297)

Reyes stated that he could not bring the claim earlier because he did not obtain the documents from the F.B.I. until June 7, 2017 and the testimony of Robert McIntire until August 4, 2017. He further provided that he had been denied access to his legal documents. (C. 3298)

He was prejudiced by counsel's failure to file the motion: "[I]f counsel would have investigated the matter, counsel could have filed a motion to disqualify Larry Mills, or counsel could have brought this matter to the attention of the courts when counsel filed the motion for a new trial." (C. 3298) Reyes continued: "[F]urthermore, counsel failed to investigate the matter of Alex Garcia whereas counsel could have filed [] a motion to disqualify Larry Mills for not notifying counsel that he (Mills) did not charge Alex Garcia with providing fake drugs on 4 different occasions as a means to make Garcia look like a credible witness." (C. 3298)

### *Issue Four*

In the section titled "Issue Four Prosecutorial Misconduct," Reyes alleges that his constitutional rights were violated "whereas former Vermilion County prosecutor Randy Brinegar prematurely destroyed all the legal documents on case number 05-CF-467." (C. 3299)

On February 22, 2021, Reyes filed a motion to withdraw issue four. (C. 3979-83)

### *Issue Five*

In the section titled "Issue Five Ineffective Assistance of Counsel," Reyes alleged a denial of various constitutional rights where "trial [counsel] failed to obtain the surgery report of Timothy Landon and properly impeach Timothy Landon about the contradictions" between the report and his testimony. (C. 3304)

On February 22, 2021, Reyes filed a motion to withdraw issue five. (C. 3979-83)

*Issue Six*

In the section titled "Issue Six Brady Violation," Reyes alleged the violation of various constitutional rights "whereas prosecutor Larry Mills had knowledge that the bullet lodged in Timothy Landon was not from the calib[e]r of gun the state (Mills) is claiming the petitioner allegedly had Exhibit G."

On February 22, 2021, Reyes filed a motion to withdraw issue six. (C. 3979-83)

*Issue Seven*

In the section titled "Issue Seven," Reyes alleged that appellate counsel for his original post-conviction appeal violated Illinois Supreme Court Rule 651(c) and provided him with unreasonable assistance. (C. 3306) He alleged that appellate counsel abandoned all of petitioner's post-conviction petition issues, added false information to his statement of facts, failed to communicate with petitioner about his contentions of error, misled the Illinois Supreme Court "to the wrong pages of the record on his statement of facts," refused to respond to Reyes's correspondence, and raised an issue in the Illinois Supreme Court that did not occur causing the petition for leave to appeal to the Illinois Supreme Court to be denied. (C. 3306-07)

Reyes provided that he could not raise the issue in his original post-conviction petition because appellate counsel was "appealing petitioner[']s original post conviction petition." (C. 3307) Reyes stated that he was prejudiced because he was denied his right to counsel and his right to appeal. (C. 3309)

*Issue Eight*

In the section titled "Issue Eight Brady Violation," Reyes alleged violation of various constitutional rights because "Larry S. Mills did not charge Alex Garcia for providing V-Meg agents with fake drugs as a means to not be cross examined about providing fake drugs and



having any cases pending in which Robert McIntire testified in case number 03-CF-220 had a habit of not charging a witness and not providing a document stating any deal or charged crime.” (C. 3310) He further stated that the State’s failure to provide the documentation that his co-defendant provided fake drugs was a *Brady* violation. (C. 3310)

The cause was stated as: “Petitioner could not have raised issue eight in his original post conviction petition do to the fact that petitioner obtained the reports from the Illinois State Police in the year of 2017.” (C. 3311) Moreover, Reyes did not know that Mills concealed documents and did not charge offenses to make witnesses appear more credible. (C. 3311) He was prejudiced because he was denied the right to confront and properly prepare a defense. (C. 3311) The information “was the perfect tool to properly impeach Alex Garcia and cast reasonable doubt on the testimony of Alex Garcia.” (C. 3311)

A hearing on the motion was held on February 24, 2021. The State assisted the court with focusing issues to be reviewed: “And just for procedural purposes, the People are in receipt of a defense motion to withdraw issues 4, 5, and 6 of his successive post-conviction petition. So I don’t know if the Court received a copy of that.” (R. 35) The State presented a copy of the motion to Reyes and the court. (R. 36) The court allowed the withdrawal of the issues. (R. 36)

The State informed the court that “the People at this stage should not be arguing the merits of a successive post-conviction petition.” The court agreed. (R. 52) After the State provided that it was not completely barred from participating, it provided: “The Court had essentially inquired, and rightfully so, where are we with all these cases? That’s why the People filed their motion and it does say to deny the Defendant’s motion for leave to file successive post-conviction petition, however, the body of it clearly is basically just outlining the procedural history of this case.” (R. 53) It asked the court to deny the motion but said: “I want to make sure that we are not attempting to influence you in any way, shape or form.” (R. 53) The court took the matter under advisement. (R. 57)

On March 18, 2021, the trial court denied the Reyes' motion for leave. (C. 3990-95)

On April 7, 2021, Reyes filed a "Motion to Vacate Judgment entered on March 18, 2021 or to Reconsider as a Matter of Law." (C. 3996-4003 ) Reyes argued that the State improperly provided input in the determination of cause and prejudice. (C. 3996-4003)

Following a hearing, the motion to reconsider was denied August 19, 2021. (R. 14, 19)

At the hearing, the court stated that he asked the State to respond to Reyes's motion for leave to file because it was unsure of where Reyes was in the process. (R. 15) The court stated: "I did not rely on any substantive arguments that were made by the State in connection with this proceeding because they made none." (R. 16) The court stated: "It was my determination of the issues.

The State's Attorney's input was not helpful to me in sorting out what your issues were." (R. 18)

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This appeal follows.

## REASONS FOR GRANTING THE PETITION

### I

The 14<sup>th</sup> Amendment of the United States Constitution prohibits the suppression of evidence favorable to the accused. *Brady v. Maryland*, 373 U.S. 83, 10 L.Ed 2d 215, 83 S.Ct 1194 (1963); U.S. Const Amend XIV. This includes favorable evidence that would be used to impeach the states case against the accused.

Alex Garcia is a co-defendant in which his testimony was critical to the states case and his credibility was a critical issue at trial. Alex Garcia was arrested on 10/1/03 for destruction of evidence and driving on a revoked license. On December 9, 2003, Alex Garcia signed a confidential sources agreement of conduct to become a confidential informant for V-MEG agents, (Vermilion County Metropolitan Enforcement Group), V-MEG is headed by the Illinois State Police. On or about January 1, 2017, petitioner filed an FOIA request to obtain the reports of Garcias involvement with V-MEG. On or about February 3, 2017, The Illinois State Police provided petitioner with a copy of a confidential source log that shows all Alex Garcias purchase dates.

Petitioner did not receive any purchase reports dated 2/3/04, 7/6/04, 8/2/04 and 8/6/04 which showed Garcia was being held in the public safety building by V-MEG agents on unrelated charges. Subsequently petitioner filed another FOIA request to the Illinois State Police requesting

the reports dated 2/3/04, 7/6/04, 8/2/04 and 8/6/04. These dates, except for 7/6/04 appeared on the V-MEG case review sheet. The Illinois State Police responded to the request by stating they had provided petitioner with all the documents in their possession and have no additional documents.

V-MEG agents terminated Garcia as an informant claiming that on 8/31/04 Garcia violated his agreement by going to jail on 8/31/04 for indictment number 39388, (720 ILCS 5.0/31-4-A and 625 ILCS 5.0/6-303-A), when in fact Garcia was arrested for indictment number 39388 on 10/1/03. V-MEG agents never reported to the Illinois State Police that Garcia was providing fake drugs, and they made it appear as if the charges Garcia was arrested for on 10/1/03 occurred on 8/31/04 and was the reason for his termination.

On June 7, 2017 petitioner received reports from the U.S. Department of Justice, (via an FOIA request), that stated Assistant States Attorney Larry S. Mills was under investigation for corruption which began on January 2, 2004. Alex Garcia was an informant for V-MEG when provided fake drugs on 2/3/04, 7/6/04, 8/2/04 and 8/6/04. The stated dates do not appear in Garcia's criminal background nor does the 10/1/03 arrest appear in Garcia's criminal background. In August 2017, petitioner obtained a copy of Kenneth Thomas's evidentiary hearing Transcript on case number 03-CF-220 in which Vermilion County Public

3) Garcias criminal background was being altered as to appear that Garcia was not in custody the days of the reports and to appear as if Garcia was arrested on 8/31/04 for indictment number 39388 when in fact Garcia was arrested for indictment number 39388 on 10/1/03.

It would have diminish the credibility of Alex Garcia in which Garcia's testimony was critical to the States case.

In denying this issue, the Illinois Appellate Court determined that trial counsel questioning Garcia about providing fake drugs one time was sufficient, (Appendix ), The Appellate courts conclusion misses the point of petitioner's argument of attacking Garcias credibility. There is a big difference in hearing the states key witness provided fake drugs one time as opposed to four times and the falsification of his arrest record.

Wherefore, petitioner prays that this Honorable Court grant him a writ of certiorari, appoint him counsel and order full briefing of this issue.

## II

The 14<sup>th</sup> Amendment of the U.S. Constitution prohibits the knowing use of perjured testimony. *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed 2d 1217 (1959); U.S. Const. Amend 14. Where important witness for the state in murder prosecution falsely testified that witness had received no promise of consideration in return for his testimony, though in fact assistant states attorney had promised witness consideration, and assistant states attorney did nothing to correct the false testimony of witness. Petitioner was denied due process of Law. *Id.*

In the case at hand, Garcia testified that he pled guilty to the conspiracy charge and all other charges in the indictment would be dropped in exchange for his truthful testimony. Prosecutor Larry Mills had first hand knowledge that Garcia was falsely testifying under oath in which Larry Mills had an un-documented deal with Garcia that involved:

- 1) Garcia never being charged for providing fake drugs.

- 2) Garcia not doing any jail time for the indictment charge 39388 arrested on 10/1/03

- 3) Altering Garcia's criminal background as to appear that the 10/1/03 charge happened on 8/31/04

Not only did Larry Mills, (Prosecutor), have first hand knowledge that Garcia was falsely testifying

but prosecutor Larry Mills was complicit to the false testimony whereas it was Mills that concealed that other deals were made.

Garcia was the states second key witness, (First key witness was victim Timothy Landon and his identification of petitioner, in which Justice Easterbrook in his June 29 2022 order on case NO. 20-1432 stated Mr. Landon's identification was unreliable), whom testified that he participated in the crime himself and implicated petitioner in the crime. Garcia's credibility was critical and prosecutor Mills knowingly used Garcia's perjured testimony to make appear to be more credible than he really was.

Wherefore, petitioner request this Honorable court to grant him a writ of certiorari, appoint him counsel and order a full briefing of this issue.

### III

The 6th Amendment of the U.S. Constitution guarantee all criminal defendants counsel to assist in their defense *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed 2d 674, 104 S.Ct 2052 (1984). U.S. Const Amend VI. The right to counsel includes the right to effective assistance of counsel, *Id.* The 6th Amendment right to counsel imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigations of options. *Id.* Trial counsel has a duty to conduct an adequate pre-trial investigation and discover available evidence in his clients favor. *Id.*

In the case at hand, counsel for petitioner was ineffective whereas counsel failed to do any investigation concerning Garcia. On cross examination counsel asked Garcia about providing fake drugs and Garcia stated he provided fake drugs one time.

Before Trial, counsel was aware that Garcia provided fake drugs cause he asked Garcia on cross examination. So counsel had ample enough time to properly investigate the fake drugs situation. Counsel could have reviewed Garcias criminal record and seen that Garcia never did any jail time for providing the fake drugs. Counsel could have seen that the 10/1/03 arrest was altered to appear as it happened in 8/31/04 in which counsel would have seen that was not terminated as an



## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Juan Reyes

Date: 6 20 23